



MONTANA MOTOR CARRIERS ASSOCIATION

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Testimony SB 380

Vice Chair, members Senate Business Labor and Economic Affairs Committee, for the record I am Spook Stang Executive Vice President of the Montana Motor Carriers Association. The MMCA and its 800 members statewide would like to go on record in support of SB 380.

SB 380 is patterned after a similar law that was passed in the state of Washington five years ago. SB 380 is in response to a problem in the trucking industry that the MMCA would like to see rectified.

MMCA members try to follow all of the regulations set forth by the Federal Motor Carrier Safety Administration (FMCSA) in regards to part 40 that deals with drug testing. Our members do not want to hire or for that matter share the road with other drivers who may be under the influence of drugs or alcohol.

FMCSA regulations require that all interstate motor carriers set up and maintain a drug-testing program. Drivers are not only tested before they are allowed to drive, but they are also randomly tested throughout the year no matter where they may be in the country. If a Montana driver happens to be in Florida, he must seek out a qualified testing facility within the prescribed time and submit to a random test. According to FMCSA figures Montana drivers test positive less often than most other states.

When hiring a driver that has worked for a previous employer a company must ask them if they have a qualifying drug testing program and if this driver has ever tested positive for a controlled substance. Federal law requires that you ask these questions and requires the other company to provide answers.

The problem comes when the driver forgets to tell you that he worked for a company and may have tested positive. He may have worked for Company A for 6

months and had a positive drug test. Usually drivers are dismissed for violation of the company's substance abuse policy and cannot be rehired by another company until they have completed a qualified drug and alcohol program. In rare occasions the driver may go to Company B and apply for a job and conveniently forget to tell Company B that he had worked for Company A. This is where the problem is. Carriers have no way to know that the driver worked for a previous company and was discharged for testing positive unless there is a record of it somewhere. Usually Company B does not find out until that driver has had an accident and tests positive again. It is then that some enterprising lawyer and private investigator will find out that he tested positive for Company A. By then it is too late as someone may have been injured or Company B will then be the one sued for bad hiring practices.

We hope that SB 380 will accomplish two goals. First and foremost we want to make sure that we do not have unsafe and impaired drivers on our roadways and we would also like to reduce the exposure of Company B by providing a database of drivers who have failed drug tests and not done the required counseling to return to duty.

This bill has no effect on a driver with a CDL who does not use drugs. It is only aimed at the small percentage of CDL holders who do use drugs and those are the ones that none of us want on the roads. It does not require any more from CDL holders than the law already asks for except that a failed test would be reported to the Department of Justice.

I have also asked the sponsor to make a couple of amendments. Change shall to may on page 2 line 10 and eliminate the penalty on page 2 line 19 and 20. These changes will make it almost identical to the current law which has worked well in Washington for 5 years now.

This program has worked well enough that there have been less than 3 hearings per year on positive tests.

I will be available to answer questions if necessary.

Members of the committee we would hope that you would support SB 380

Spook Stang

From: Ben Ives [bives@idustransfer.com]
Sent: Thursday, February 08, 2007 11:00 AM
To: Spook Stang
Subject: SB 380
Importance: High

Spook, here is a revised statement of support for SB380. Since it appears the weather will prohibit me from driving to Helena to testify in person please present this to the Committee on my person behalf and that of the Great Falls International Airport
 Ben

Good morning Honorable Members of the Committee. I wish to offer support for SB380 - the bill to require that MRO's - Medical Review Officers report positive drug test results to the MT DMV so that they may be included on a persons MVR (Motor Vehicle Report). The passage of this bill is imperative to highway safety in the State of MT and closes a large loophole in which persons that use or abuse prohibited controlled substances are able to circumvent the purpose of drug testing of Commercial Vehicle operators as well as others in the workplace that have safety sensitive functions.

Background:

As the rules are now, if a person applies for employment and is given a Pre-Employment drug test and fails it, the prospective employer has no means to forewarn any subsequent employers, the reason being is that because the person HAD not been hired due to the failed drug test that person was never an employee of the firm and thus the information may not be divulged nor is the applicant required to report it to any subsequent prospective employers. Example (this is an actual situation that happened 2 years ago) CDI Driver A has time off from his current OTR truck driving job at employer B- scheduled time off - he sees an ad for drivers for employer C and decides that he will check it out to see if he wants to change positions. Employer C takes all of his required information which includes driver A's current employment and presents driver A with employer C's drug and alcohol policy which he reads and signs. At that point driver A is given a Pre-Employment drug test and fails it - it comes back positive. Driver A is informed of this and the fact that he is not employable by company C's standards so he goes back to work after his days off at employer B just as if nothing happened. Driver A is not obligated by law to report this to employer B and prospective employer C cannot inform current employer B of the event. Thus there is an impaired driver on the highway.

Both Oregon and Washington have passed legislation to make it mandatory that the MRO report the positive directly to the DMV to be included on the drivers MVR. This past fall I had an applicant answer an add for a driving position for our company from the state of WA. When we did the background and due diligence checks on him he was clean on his employment and previous employment. When we instructed him to go to our authorized collection site in Tacoma WA to do his pre-employment drug screen, he said he could not as if it was not on his MVR yet it would be since he had applied for employment at another carrier and had failed the drug test. Even though WA State was still in the process of updating his MVR with the failed test on it he knew that it would come out. He is currently working with a SAP - Substance Abuse Professional - to become eligible and employable again as a commercial driver.

In short, once a person is employed they can apply for other employment and fail drug tests without any chance of the failure being passed on to anyone. At this point the only way they would be found out is with a random test and if the person then goes to apply for another position in a safety sensitive position and does not list his previous employer on the next application the new employer will have no way of know about substance abuse and if the person did receive treatment.

Our current laws permit the listing of DUI on a person's MVR

in the name of safety to alert people of safety areas to be specifically addressed with certain applicants, SB380 would bring attention to another area of public and workplace safety.

If SB380 passes it may never be known how many if any lives may be saved or lifestyle preserved by using this law as a deterrent to impaired performance of safety sensitive duties but honestly this is one area I would rather not have a body count - literally.

Thank you for your time and careful consideration of SB380.

Ben E. Ives

President

Industrial Transfer & Storage Co, Great Falls, MT

2/8/2007